IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. V.G. (DOB 03/16/1990), Appellant.	)	No. 56991-1-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION
	)	FILED: September 18, 2006

PER CURIAM – V.G. challenges her sentence for Minor in Possession and/or Consumption of Alcohol. She contends the juvenile court exceeded its authority by imposing non-individualized community supervision conditions and improperly delegated its authority to a probation officer to direct the type of treatment she would receive. A juvenile court has broad discretion to fashion community supervision conditions tailored to meet the individualized needs of a juvenile offender and may delegate its authority to a probation officer to order specific programming. But the court exceeds its authority when it requires sex offender and anger management treatment without a basis in the juvenile's criminal or social history. We reverse the portion of the court's order requiring sex offender and anger management treatment and affirm all the

other conditions.

FACTS

On September 20, 2005, the trial court found V.G guilty of Minor in Possession and/or Consumption of Alcohol (MIP).[1] At sentencing the prosecutor recommended 12 months' probation, 40 hours community service and seven days in detention; V.G.'s attorney requested a sentence consisting solely of seven days of detention.[2] The court did not inquire if V.G. wished to address the court before sentencing her to seven days' detention, credited as time served, and 12 months' community supervision.[3] V.G.'s counsel did not object. As a condition of community supervision, the court required V.G. to cooperate fully, attend educational programs, and participate in counseling, outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as directed by her probation officer.

DISCUSSION

Right of Allocution

V.G. assigns error to the court's failure to afford her an opportunity to speak at her disposition hearing. She asserts she was prejudiced because she could have offered a persuasive argument on her own behalf at the sentencing hearing. The State

[1] RCW 66.44.270(2)(a), (2)(b).

[2] V.G.'s criminal history included adjudications for Burglary in the Second Degree, two third degree thefts, and Possession of Drug Paraphernalia. At the time of the sentencing hearing, V.G. was on community supervision and participating in drug and alcohol treatment for another matter.

[3] The standard range for her offense allowed for up to 30 days in detention, up to 12 months of community custody, up to 150 hours of restitution and a fine up to $500.

argues this issue cannot be raised for the first time on appeal because V.G. did not object below. We agree.

A trial court's failure to solicit a defendant's statement in allocution is a legal error.[4] But the Supreme Court in State v. Hughes held that the right to allocution may not be raised for the first time on appeal.[5] Under RAP 2.5(a)(3) we need not consider issues that are not a "manifest error affecting a constitutional right" for the first time on appeal. V.G's right of allocution is derived from state law and is not constitutional in nature.[6] We therefore decline to address this issue.

Conditions of Community Supervision

V.G. does not challenge the court's imposition of alcohol and substance abuse program conditions. She asserts the court exceeded its authority by imposing mental health, sex offender, and anger management programs as community supervision conditions because these conditions were not specifically tailored to meet her needs. V.G. relies on State v. H.E.J. to argue that a nexus between conditions of community supervision and the underlying offense is necessary to create a program suited to a juvenile's specific needs.[7] She asserts that the nexus is absent here because nothing in her background justifies ordering mental health, sex offender and anger management

[4] State v. Hughes, 154 Wn.2d 118, 153, 110 P.3d 192 (2005), overruled in part on other grounds, Washington v. Recuenco, 2006 U.S. LEXIS 5164, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).

[5] 154 Wn.2d 118, 153, 110 P.3d 192 (2005), overruled in part on other grounds, Washington v. Recuenco, 2006 U.S. LEXIS 5164, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).

[6] Id.

[7] 102 Wn. App. 84, 87, 9 P.3d 835 (2000).

treatment. She also argues the court violated her due process rights by delegating to the probation officer the authority to establish specific community supervision requirements. The State argues the court is responsible for setting the conditions of community supervision but it may delegate this authority to a probation officer so long as the delegation is not "excessive."[8] It also asserts the court's delegation was proper because it merely delegated the authority to order programming that meets the community's and V.G.'s specific needs.

In the adult context, community supervision conditions must be crime-related.[9] But the goals of the juvenile sentencing system differ from those of the adult criminal system.[10] Juvenile courts may design a specialized program for juvenile offenders based on their individual needs.[11] They have broad discretion to tailor dispositions to meet the needs of juveniles and the rehabilitative and accountability goals of the juvenile code.[12] While juvenile offenders' sentences need not be limited to crime-related conditions, the court may not order community supervision conditions without any basis in the record. In this case, the court exceeded its authority by ordering anger management and sex offender treatment because nothing in the record indicates V.G.

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[8] State v. Sansone, 127 Wn. App. 630, 641-42, 111 P.3d 1251 (2005).

[9] RCW 9.94A.120(20).

[10] State v. J.S., 70 Wn. App. 659, 664, 855 P.2d 280 (1993) ("because the juvenile system focuses on twin goals of punishment and rehabilitation of juvenile offenders, it differs materially from the adult sentencing system in which punishment is the primary purpose") (quoting State v. Rice, 98 Wn.2d 384, 392-93, 655 P.2d 1145 (1982)).

[11] See State v. J.H., 96 Wn. App. 167, 181, 978 P.2d 1121, review denied, 139 Wn.2d 1014 (1999), cert. denied, sub nom. Anderegg v. Wash., 529 U.S. 1130 (2000).

[12] H.E.J., 102 Wn. App. at 87 (quoting J.H., 96 Wn. App. at 181).

needs either.[13] While a juvenile court may order treatment, including anger management and sex offender treatment, for juvenile offenders whether or not they had been previously convicted of similar crimes,[14] it exceeds its authority when it imposes conditions without a rational basis.[15]

Sentencing courts have the power to delegate some aspects of community placement to the Department of Corrections. Because "'the execution of the sentence and the application of the various provisions for the mitigation of punishment and the reformation of the offender are administrative in character,'" the court may delegate some authority to probation officers to customize the conditions of community supervision so long as the delegation is not excessive and the probation officer acts within the constraints of the orders imposed by the court.[16] The juvenile court did not err by delegating authority to the probation officer to supervise V.G.'s sentencing conditions because the probation officer is in the best position to determine her specific treatment needs.

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[13] The Whatcom County Juvenile Court uses a form for its juvenile adjudication orders that lists a number of discretionary conditions of supervision grouped in boxes K through Q to be chosen by the court at the time of sentencing. Here, the court checked Box M. It states "[r]espondent shall participate in counseling, outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as probation officer directs. Respondent shall cooperate fully." The form appears to have exacerbated the problem in this case because it appears to limit the court to an "all or nothing" choice. It does not lend itself to designing an individualized program.

[14] See H.E.J., 102 Wn. App. at 87.

[15] State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds.). We note that the record does support the mental health treatment condition.

[16] See Sansone, 127 Wn. App. at 642 (quoting State v. Mulcare, 189 Wash. 625, 628, 66 P.2d 360 (1937)); United States v. Mohammad, 53 F.3d 1426, 1438 (7th Cir. 1995).

We reverse the court's imposition of anger management and sex offender treatment and affirm the other conditions.

For the Court: